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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,013	08/26/2003	William Andrew Sipe	03025	3324
24386 7590 02/06/2008 ROBERT W PITTS PO BOX 11483 WINSTON-SALEM, NC 27116-1483			EXAMINER SAYALA, CHHAYA D	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			02/06/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/648,013

Applicant(s)

SIPE, WILLIAM ANDREW

Examiner

C. SAYALA

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/26/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horton (US Patent 4503077) in view of Kawamura (US Patent 4788072) and Aung et al. (US Patent 5227183) and further in view of Kozma (US Patent 6020013).

Horton teaches preserving fish bait, i.e. worms by cleaning, pre-cooling, freeze-drying to a pre-selected temperature, where necessary, and then packaging.

Since the patent is drawn to fish bait and to worms, to apply this to catalpa larvae would have been prima facie obvious, since it appears well established that catalpa worms are used in prior art as fish bait. Details of time conditions, or the extent of cleaning, or the time required for the cooling step would have been obvious to the skilled artisan based on Horton teaching that the steps are to be conducted "if necessary", then determination of time conditions would have been obvious too. The patent teaches packaging the worms. The patent does not teach blanching the worms.

Kawamura teaches a process for dehydrating foodstuffs which includes blanching foodstuffs such as anchovies, clams, mussels, fish, etc. i.e. foodstuff that would reasonably be expected to have the same perishability as the claimed worms. See col. 3 and col. 4. Note also that the next step after blanching is indicated to be

freezing, col. 5, line 57. Therefore to incorporate the blanching step before the freezing step of Horton would have been prima facie obvious.

As for the use of drying racks, or blotting out water with paper towels, these are implements that were already known to the skilled artisan at the time the invention was made and applicant was not the first to invent these. Therefore, to incorporate such in the Horton process would also have been obvious.

The patents do not disclose maintenance of color or aroma during the above process. Aung et al. that follows the same process steps teaches that the flavor and aroma are maintained. While this patent is drawn to herbs, one of ordinary skill in the art would have reasonably expected that this would apply to worms also.

Claims 18 to 20 recite packaging that contains the frozen catalpa which is impervious to oxygen and moisture. Claim 20 recites a vacuum bag. Kozma discloses such a bag which is impervious to oxygen and moisture and also a self-vacuum bag in prior art at col. 1, line 66, and to use such for its benefits and usefulness. As for the length of the worm that is being stored, to chop foodstuff to a required size has been disclosed by Kawamura and to do the same would have been obvious.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



C. SAYALA  
Primary Examiner  
Group 1700.

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Substitute for form 1449/PTO		<b>Complete if Known</b>	
<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b> <i>(Use as many sheets as necessary)</i>		Application Number	
		Filing Date	
		First Named Inventor	Sipe
		Art Unit	
		Examiner Name	
Sheet 1 of 2	Attorney Docket Number	03025	

U. S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number Number-Kind Code <sup>2</sup> (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
/C.S./		US- 4155331	5-22-1979	Lawrence et al.	
		US- 4160847	7-10-1979	Orth, Jr.	
		US- 4161158	7-17-1979	Kartesz	
		US- 4503077	3-5-1985	Horton	
		US- 5173316	12-22-1992	Heycott	
		US- 5776523	7-7-1998	Axelrod	
		US- 6020013	2-1-2000	Kozma	
/C.S./		US- 6284298	9-4-2001	Montgomery	
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FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear	T <sup>6</sup>

Examiner Signature	/Chhaya Sayala/	Date Considered	01/31/2008
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**INFORMATION DISCLOSURE  
STATEMENT BY APPLICANT**

(Use as many sheets as necessary)

**Complete if Known**

Sheet 2 of 2	Application Number	
	Filing Date	
	First Named Inventor	Sipe
	Art Unit	
	Examiner Name	
Attorney Docket Number		03025

**NON PATENT LITERATURE DOCUMENTS**

Examiner Initials*	Cite No. <sup>1</sup>	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T <sup>2</sup>
/C.S./		CODER, KIM D., The University of Georgia. Dec. 1999, "Southern Catalpa: The Fish Bait Tree," <a href="http://www.forestry.uga.edu/wamell/service/library/index.php?docID=178&amp;docHistory[]=2">http://www.forestry.uga.edu/wamell/service/library/index.php?docID=178&amp;docHistory[]=2</a> downloaded on 7/9/2003	
		BAAERG, W.J., 1935, "Three shade tree insects, II Great Elm Leaf Beetle, Catalpa Sphinx and Eastern Tent Caterpillar" University of Arkansas Agricultural Experiment Station Bulletin No. 317	
		HOWARD L.O., CHITTENDEN, F.H., 1916, "The Catalpa Sphinx", United States Department of Agriculture Farmers Bulletin, Bulletin 705, Feb. 16, 1916.	
		HYCHE, L.L., 1994, "The Catalpa Sphinx", Alabama Agricultural Experiment Station, Auburn University, Leaflet 106, March 1994	
		Nayar J.K., FRAENKEL G. 1963 "The Chemical Basis of the Host Selection in the Catalpa Sphinx, <i>Ceratomia catalpae</i> (Lepidoptera, Sphingidae). Annals of the Entomological Society of America, Vol. 5, pages 119-122.	
		Agency for Toxic Substances and Disease Registry, Medical management Guidelines (MMGs) for Formaldehyde (HCHO), <a href="http://www.atsdr.cdc.gov/MHMI/mmg111.html">http://www.atsdr.cdc.gov/MHMI/mmg111.html</a> downloaded on 7/14/2003	
		NIOSH Pocket Guide to Chemical Hazards - Formalin, <a href="http://www.cdc.gov/niosh/npg/npgd0294.html">http://www.cdc.gov/niosh/npg/npgd0294.html</a> downloaded on 7/14/2003	
		Freezing Fruits and Vegetables, Clemson Extension Home & Garden Information Center, <a href="http://hgic.clemson.edu/factsheets/HGIC3063.htm">http://hgic.clemson.edu/factsheets/HGIC3063.htm</a> downloaded on 8/2001	
/C.S./		NESS, J.H., "Catalpa bignonioides alters extrafloral nectar production after herbivory and attracts ant bodyguards" Published online 22 Nov. 2002	

Examiner Signature	/Chhaya Sayala/	Date Considered	01/31/2008
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